COMMONWEALTH OF MASSACHUSETTS
D`EPARTMENT OF TELECOMMUNICATIONS & ENERGY

Investigation by the Department of Telecommunications & Energy upon its own motion commencing a Notice of Inquiry/Rulemaking establishing the procedures to be followed in electric industry restructuring by electric companies subject to G.L. c. 164.	)))))	D.P.U./D.T.E. 96-100

COMMENTS OF THE DIVISION OF ENERGY RESOURCES ON THE DEPARTMENT'S NOTICE OF INQUIRY AND ORDER SEEKING COMMENTS ON ITS PROPOSED PROCEDURES TO BE FOLLOWED IN ELECTRIC INDUSTRY RESTRUCTURING BY ELECTRIC COMPANIES

Pursuant to the Order of the Department of Telecommunications & Energy ("DTE" or "Department") issued on January 16, 1998, order proposing regulations and soliciting comment, the Division of Energy Resources ("DOER") hereby submits these comments.

I. INTRODUCTION

In its Order dated January 16, 1998, the Department seeks general comments on its proposed regulations, including the emergency regulations, and on specific issues raised by the Department. DOER believes that the final disposition of these regulations will have a profound, long-term effect on how quickly and successfully competition is introduced into the electric industry in Massachusetts. We believe that the Legislature's intent in passing the Electric Industry Restructuring Act was not only to create a framework to regulate electric companies subject to G.L. c. 164 after March 1, 1998, but to also ensure that all consumers benefit from retail competition. The most effective way to ensure that outcome is for the Department to create rules and procedures that allow the market to work. In promulgating these regulations, the Department must protect the interests of consumers while not creating onerous procedures or barriers that will

make it difficult for Competitive Suppliers, Brokers, Aggregators and other market participants that wish to compete in the market to do so. DOER proposes the following changes to the Department's draft regulations in order to maintain an appropriate balance between the competing interests of stakeholders and more effectively promote a competitive environment in Massachusetts' electric industry.

II. GENERAL DEFINITIONS

DOER proposes the following changes to 11.02: General Definitions:

(a) Load-serving Entity definition

The proposed regulations provide that every Competitive Supplier either be a NEPOOL participant or "meet its transaction requirements through a contractual arrangement with a NEPOOL participant." (Section 11.05(2)(b)(14)). This is consistent with the Model Terms and Conditions for Competitive Suppliers (DTE 97-65, December 31, 1997, Attachment II), which states in Section 3A (page 119):

> A customer shall select one Competitive Supplier for each account at any given time, or authorize an agent to make the selection for the Customer, for the purposes of the Distribution Company ... reporting the Customer's hourly electric consumption to the ISO-NE.... Nothing in these Terms and Conditions shall prohibit a Customer from entering into arrangements with multiple Suppliers, provided that a single Competitive Supplier is designated for the purposes described above.

Taken together, these terms and conditions make it clear that, as the Department stated in its accompanying Order, "an all-requirements provision would not preclude a customer from entering into an arrangement with Suppliers whereby the customer's load is met by multiple Suppliers" (DTE 97-65, page 9).

In order to implement these provisions and policies, DOER recommends that the definition of Load-serving Entity (LSE) in the proposed 96-100 regulations be changed. In the proposed regulations, a Load-serving Entity is defined as "any entity selling electricity to retail customers in the Commonwealth, including Competitive Suppliers and Distribution Companies providing Standard Offer Generation Service or Default Generation Service." However, the most important

and relevant characteristic of a Load-serving Entity should be that it is recognized by the ISO as being responsible for supplying the load, i.e., the full customer requirements. Customer requirements include energy, spinning reserve, other operating reserve, operable capacity, and installed capacity.

The Department's definition of a LSE would imply that any seller must always take full responsibility for the customer's load. This provision needlessly restricts the market and is inconsistent with the Terms and Conditions cited above.

Sellers may be Load-serving Entities. However, there may also be Load-serving Entities that take responsibility for services not provided by particular sellers (by agreeing to contractual arrangements or by purchasing from the NEPOOL power exchange for such services). In addition, an entity may agree to function as a Load-serving Entity for a seller that provides full requirements but is not recognized by NEPOOL as the Load-serving Entity. There currently are "entities selling electricity to retail customers" in pilot programs through the mechanism of agreements with Distribution Utilities to serve as the Load-serving Entity. Such arrangements where an entity other than the seller accepts the responsibilities of Load-serving Entity on behalf of customers may continue under retail access.

There may be Suppliers that wish to supply only part of the customer's energy load, and provision should be made to accommodate this option.

Therefore, we suggest that "Load-serving Entity" be defined as "the entity recognized by the ISO as responsible for the load of one or more customers" (See p. A-27 of the Department's proposal on labeling). This definition would prevent confusion between Load-serving Entities as defined by the regulations and those as defined by the ISO.

(b) Other Definitions

Alternative Energy Producer is not defined in the proposed regulations, but the term is used in the definition of an Electric Company. We suggest that the regulations include a definition for an

Alternative Energy Producer, and that the definition match that of Chapter 164.

Ancillary Services is not defined in the proposed regulations. Ancillary services are services in addition to the provision of energy that are required by the New England ISO for all loads. We suggest that the regulations include a definition for Ancillary Services, and that the definition match that of Chapter 164.

Applicant is defined in the proposed regulations, as any entity that is "required to file" as a Supplier. We find this definition awkward, and suggest that the language be changed to read: "one that has filed an application".

Bill is defined in the proposed regulations in a manner that may be interpreted to unduly restrict Competitive Suppliers. The definition could imply that only charges approved by the Department can appear on the bill. While it is appropriate for bill components identifying charges from a Distribution Company charges to be Department-approved rates, the regulations should avoid the possible interpretation that a Competitive Supplier's rates must be approved by the Department. DOER recommends that the last four words of the definition in the proposed regulations, "approved by the Department," be eliminated.

Termination of Electric Service should be defined so as to make it absolutely clear that the term refers to the physical disconnection of a customer from a distribution system, rather than some other form of termination of service (termination of Generation Service by a Competitive Supplier, for example). Such a definition would limit concerns that Distribution Companies could be responsible for determining the conditions under which Competitive Suppliers can terminate Generation Service to customers (see, for example, Section 11.04(11)9(b).

Capacity is defined in the proposed regulations as a function of a "generating unit...or other electrical apparatus...rat(ing)". We find this definition awkward, and suggest that the language reflect a relationship to Mega-Watts (MW) that may be traded in the electricity market.

Electrical Load is not sufficiently defined in the proposed regulations. There have been several New England Power Pool (NEPOOL) Agreements to date. We suggest that the definition of this term refer to the Restated NEPOOL Agreement, or the successor agreement(s) approved by the Federal Energy Regulatory Commission (FERC).

Electricity Broker is too broadly defined in the proposed regulations. Many entities could "facilitate" transactions without playing a role sufficient to require registration with the Department. The definition should be changed from "...any entity that facilitates..." to "...any entity that acts on behalf of a buyer or seller to arrange for the purchase or sale of electricity...."

Known Resources should be defined in the definitions rather than by reference to another subsection of the proposed regulations.

Transition Costs is defined too broadly in the proposed regulations. The definition should adopt the specific cost criteria included in previous definitions of stranded costs.

III. TRANSITION COST RECOVERY

DOER proposes the following changes to 11.03: Transition Cost Recovery:

Additional clarity is needed regarding the treatment of any revenues above operating costs ("net margins") that might be earned by nuclear generating units. The filing requirements are intended to provide the Department with the information necessary to determine the appropriate Transition Charge. There appears to be no explicit mechanism under the proposed rules by which the net margins earned by nuclear generating units would be included in the Transition Charge. Section 11.03(1)(d)1 establishes the "amount of any unrecovered fixed costs for Generation-related assets and obligations" as the starting point in the Transition Charge calculation. Non-nuclear units are subject to divestiture, which will determine the market value of these units for purpose of identifying mitigation applicable to the Transition Charges calculation (Section 11.03(2)(a)1).

Nowhere is there an explicit provision for the treatment of net margins that may be earned by "non-divested" nuclear generating units.

DOER recommends that such provision be included in the list of "General Mitigation Requirements." The following could be added under Section 11.03(2)(a) as a second item: "A netting against book value of nuclear generating units of the net present value of the revenues in excess of operating costs expected to be earned by these units, and any other factors that should be recognized in assessing their value."

IV. DISTRIBUTION COMPANY REQUIREMENTS

DOER proposes the following changes to 11.04: Distribution Company Requirements:

(a) Renewable Resources: Section 11.04 (7)(d)

This section allows customers with on-site generation of 60 kW or less to run the electric meter backward, but then requires that customers pay "all other charges for each kilowatthour delivered by the Distribution Company." These two provisions are incompatible. The payment of volumetric charges for each kilowatthour delivered will require the installation of dual electric meters - - one to measure kilowatthours delivered by the Distribution Company, another to measure kilowatthours returned by the customer to the distribution system. With dual meters, the customer looses the ability to "run the meter backward" and the associated financial incentive. The wording of the last sentence in this section should be revised to read as follows:

> Net metering customers must still pay the minimum charge for Distribution Service (as shown in an appropriate rate schedule on file with the Department) and all other charges for ~~each~~ the net kilowatthours delivered by the Distribution Company in each billing period.

(b) Energy Efficiency: Section 11.04 (8)(a)

DOER proposes additional language in this section in order to clarify that companies filing Energy Efficiency programs with the Department must first have the plans reviewed by DOER for consistency with the state's energy efficiency and fuel diversity goals. DOER recommends that the following language is added to Section 11.04 (8)(a):

Purpose. This section establishes a funding mechanism to support Distribution Company-provided

Energy Efficiency and Demand-Side Management services "and a process by which programs will be reviewed by the Department and the Division of Energy Resources."

(c) Energy Efficiency: Section 11.04 (8)(c)

DOER recommends that the following language is added to Section 11.04 (8)(c):

Department Review. The Division of Energy Resources shall annually file a report with the Department on the proposed funding levels for energy efficiency programs. "Companies filing energy efficiency programs with the Department shall describe their coordination with the Division of Energy Resources and demonstrate that these programs are consistent with statewide energy efficiency and fuel diversity goals established by the Division." The Department shall ....was cost effective.

(d) Default Service Procurement: Section 11.04(9)(c)(3)

Section 11.04(9)(c)(3) of the proposed regulations indicates that each Distribution Company would procure electricity for Default Generation Service through competitive bidding. DOER believes that it would be appropriate, and perhaps necessary, that the option exist for power purchased from the independent system operator or some other approved power exchange be allowed to be sold to customers on Default Generation Service at a Department-approved rate. This would be appropriate because a competitive, bid-based system of dispatch as administered by the system operator (or possibly, as achieved by a power exchange) would be expected to yield an equivalent set of benefits to customers. Moreover, to the extent that Default Generation Service cannot be achieved through any other "competitive bidding" mechanism, or its delivery does not occur for whatever reason, power would flow from the system operator to a Distribution Company at the ISO's FERC-approved rates -- the "true" default position of the system. The ISO's regional market with bid-based dispatch is clearly a form of "competitive bidding".

DOER suggests that subparts 2 and 3 under Section 11.04(9)(c) be revised accordingly. The following language should be added to subpart 3:

> At such times as the Department determines that the ISO New England or some other power exchange has established an operational and workably competitive market or bid-based dispatch system that provides a competitive market price for electricity, the procurement of electricity for Default Generation Service from the ISO or power

exchange at the market clearing price shall be deemed to be a form of competitive bidding.

(e) Default Service and Low-income Customers: Section 11.04(9)(d)

The proposed regulations [Section 11.04(9)(d)] state that "each Distribution Company shall make a determination whether a Low-income Customer shall be placed on Standard Offer Service or Default Generation Service based on which service has a lower rate, unless otherwise indicated by the Customer. This determination shall be made at the time the service is initiated."

This provision lacks guidance and leaves too much discretion to the Distribution Company in determining service assignments for Low-income Customers. For example, if a Distribution Company's Standard Offer rate is oversubscribed vis-à-vis the level to which the company has committed contractually, there is an incentive for the Distribution Company to assign as many customers as possible to what might be a less desirable Default Service rate.

DOER suggests that more specific standards guide the Distribution Company's Low-income Customer decision process. The regulations should require that the assignment of a Low-income Customer be based on a comparison of the Standard Offer Rates for the upcoming six-month period to the Default Service Rate applicable to the subsequent six-month period.

(f) Billing and Payment -- Costs Allowed in Bills from Competitive Suppliers: Section 11.04(10)(c)

DOER has profound concerns regarding apparent limitations under the proposed billing options. Section 11.04(10)(c) authorizes Competitive Suppliers to bill for Generation Service, which is narrowly defined in Section 11.02. Such language is problematic and unduly narrow. Under the definition of costs allowed in bills, Competitive Suppliers would not be able to recover any other costs that they incur in providing electricity to customers. For example, Suppliers would not be allowed to recover charges for certain transmission services.

As a very general matter, the rates charged by "competitive" Suppliers should not be "cost based." When the Department defines the costs Competitive Suppliers can seek via recovery through rates, the Department is regressing to the traditional ratemaking paradigm.

Nonetheless, DOER recognizes that bills to customers should segregate all charges associated with electricity provided by a Competitive Supplier. Accordingly, we recommend that Section 11.04(10)(c) be modified to read:

> Each Distribution Company shall offer two billing options to a Customer receiving Generation Service from a Competitive Supplier: (1) a passthrough billing, under which the Customer would receive one bill for services provided by the Distribution Company at Department-approved rates and a second bill for services provided by the Competitive Supplier; and (2) complete billing, under which the Customer would receive a single bill from the Distribution Company that would include charges for services provided by the Distribution Company at Department-approved rates and, separately, charges for services provided by the Competitive Supplier.

V. COMPETITIVE SUPPLIER REQUIREMENTS

DOER proposes the following changes to 11.05 Competitive Supplier Requirements:

(a) Licensing Requirements: Section 11.05(2):

DOER requests the Department's assistance in implementing sections of the Electric Industry Restructuring Act, Chapter 164 of the Acts of 1997, that establish requirements for DOER to monitor and collect data regarding electricity markets in Massachusetts. The implementation of certain licensing requirements within the Department's regulations will help DOER achieve its statutory responsibilities.

Suppliers should be required, as a condition of licensure, to agree to provide DOER with the information that will be necessary for DOER to meet its statutory requirements for information reporting. As part of their filings to the Department, Suppliers should be obligated to include a legally enforceable document committing the Supplier to provide the necessary information. The following language should be added to the list in Section 11.05(2)(b):

> A statement signed by a company officer indicating that the Applicant has made provision to comply and will comply with any information reporting regulations promulgated by the Division of Energy Resources in order to fulfill the agency's requirements under the Electric Industry Restructuring Act of 1997.

Suppliers should also be required to provide their license applications to DOER, as the

applications will contain much of the information necessary for DOER to meet its statutory obligations. Section 11.05(2)(b) should be modified to include DOER as a recipient of each license application.

(b) Conducting business with unauthorized entities: Section 11.05(5)

This section states that a "Distribution Company, Competitive Supplier or Electricity Broker may not do business with any Competitive Supplier or Electricity Broker that has not been licensed by the Department ...." The term "may not do business with" is overly broad and perhaps unduly restrictive. It may, for example, inhibit Suppliers who are considering entering the Massachusetts market but have not yet registered with the Department or completed the licensing process.

DOER suggests that the provision be revised to narrow the focus to the particular transaction in which an unlicensed entity should not participate -- namely the sale of electricity to a retail customer. DOER recommends that the regulations be revised to state that a "Distribution Company, Competitive Supplier or Electricity Broker may not engage in a transaction by which electricity is delivered to a Retail Customer in Massachusetts with any Competitive Supplier or Electricity Broker that has not been licensed by the Department ...."

VI. INFORMATION DISCLOSURE REQUIREMENTS

DOER proposes the following changes to 11.06 Information Disclosure Requirements:

(a) Product- vs. Company-based Disclosure: Section 11.06 (2)(d)(1)

In section 11.06(2)(d)1(a) of the Department's proposed regulations, the Department proposes that disclosure labels reflect fuel mix, emissions and labor data based on a Load-Serving Entity's[1]

[1] The Department uses the term "Load Serving Entity" to mean any entity selling electricity to retail customers in the Commonwealth, including Competitive Suppliers and Distribution Companies providing Standard Offer Generation Service or Default Generation Service. In these comments, we use the term "Supplier" to mean any entity that provides generation service to retail customers. We use the term "Load Serving Entity" to refer only to the entity that has a settlement account with the ISO. As explained in Section II9a) above, we suggest use of this terminology in the Department's final rules to eliminate potential confusion relating to the fact that, under ISO rules, a "Supplier" and an "LSE" are not necessarily the same. A Supplier may be, but does not have to be, an "LSE." If it is not an LSE, the Supplier must have a contractual relationship with an LSE in order to have its retail load supplied by the NEPOOL

(LSE) entire portfolio of settlement resources ("company-based labeling"). The Department's proposal stands in contrast to the Report and Recommendations of the New England Disclosure Project — a regional stakeholder process — which embraced "product-based" labeling after extensive discussion and consideration of wide-ranging concerns. Product-based labeling would allow Suppliers to present label information about specific generation products that legitimately and lawfully will be offered in the marketplace, and which are comprised of a contractually defined subset of a LSE's settlement resources.

Product differentiation is a key element to an efficient market and to providing informed customer choice. This goal should take precedence over enforcement concerns that may or may not materialize.

DOER has profound concerns regarding the serious negative effects we believe the proposed regulations would have on two of the fundamental goals of restructuring: (1) encouraging competitive Suppliers to provide customers with electricity choices that meet customers' needs and desires, and (2) providing customers with meaningful and accurate information about the characteristics (price, price variability, fuel mix, air emissions, and labor data) of electricity choices available in the competitive market, thereby enabling customers to make choices consistent with their preferences. Consumer research to date shows that, while most customers will be motivated by price considerations, a substantial percentage of customers will also be motivated in part by other, non-price characteristics of the electricity they purchase.

As we have already seen in pilot programs and states where choice is being introduced, an individual Supplier may wish to offer a variety of generation service products that have different price characteristics (e.g. fixed or variable) or rely on a specified subset of a LSE's settlement account resources to address differing customer preferences regarding fuel mix, emissions, or labor associated with electrical generation. A company-based tracking method, as proposed by the Department, would require that all products associated with an LSE's individual settlement

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system. In addition, an LSE may be, but does not have to be, a "Supplier". An LSE can serve as a wholesale aggregator, without providing retail service to customers.

account have the exact same label information regarding fuel mix, emissions, and labor data. However, the price data on a company-based label would reflect the contractual price of the actual product offered.

Under the Department's proposed labeling rules, certain product offerings, for example those that feature clean and renewable resources, would be deprived of the ability to convey product-specific fuel, emission or labor characteristics, while conversely being required to show product-specific price information. One result of this would be that consumers would find it difficult to identify and select or reject "green" products. It would appear from the label that these green products have the same environmental characteristics as other products, and yet carry higher prices. Ironically, instead of encouraging Suppliers to offer green products that benefit the environment, and assisting customers in identifying and selecting these products, the Department's company-based label may prevent this market from even developing. Environmental quality benefits relating to market-based green electricity demand will be greatly diminished, and legitimate green Suppliers may decline to participate in the Massachusetts market. This would serve no logical public policy or market interest and has no basis in Chapter 164 of the Act of 1997 (the "Act").

There are, of course, many other types of market-driven product offerings that could be needlessly frustrated by the use of company-based labeling. For example, based on provisions in Chapter 164 of the Acts of 1997, the Department is required to incorporate labeling provisions regarding union labor associated with the customer's electricity supply. With such information available on the label, market demand may result in the development of "union-made" electricity products. Again, company-based labeling would serve to obscure, rather than differentiate, generation characteristics by averaging the labor data for all products associated with an LSE settlement account instead of defining the union labor content of power supplies on product-by-product basis.

Given the lack of commentary in the Department's order on proposed CMR 220 11.06, parties in this proceeding must speculate as to the concerns that prompted the Department's preference for company-based labeling. Nevertheless, in D.P.U. 96-100, Model Rules and Legislative Proposal,

pp. 128-129 (1996) the Department stated several concerns about product-specific labeling. Among them, the Department noted that there is no assurance that customer electricity preferences would change the dispatch of particular units currently in operation. There may also be a related issue as to whether, in the long term, customer electricity preferences will truly affect generation source development and thereby alter the fuel mix or emissions relating to future generation sources. Such concerns about the effects of market demands may lead some to conclude that labeling would deter customers from believing that their electricity choice matters from an environmental standpoint, and that product-based labeling (which shows greater differentiation of generation resources) is more likely to "mislead" customers in this regard than company-based labeling.

DOER believes that the purpose of the label should be, above all, to provide accurate information to customers. To the extent that a label were to state or imply that customer choice would necessarily affect dispatch or resource development, this would be misleading, but this has not been proposed under either product- or company-based disclosure approaches. Furthermore, this would be a poor rationale to justify company-based labeling rather than product-based labeling. Regardless of whether customer choice has real potential to affect dispatch of units in the short term or resource development in the long term, we believe a proper remedy for such concerns is to ensure that the label has appropriate language to prevent customer confusion or misunderstanding -- the remedy should not be to obfuscate real product distinctions with company-based labeling.[2]

While we believe that the purpose of the label is not to expressly state or imply whether a customer choice's will necessarily affect dispatch or resource development, we do believe that market demand, expressed through customer choice of products, will have an impact on the dispatch of resources in the short-term and on the choice of resources that will be developed in

[2] To address this concern, DOER has changed the wording on the proposed label format and eliminated the phrasing "purchases of this electricity … resulted in power generation by the following sources" to "*The following power sources were used to provide this generation....*" The intent of this change is to avoid any implication that customer choice will necessarily affect dispatch or resource development. See also DOER's comments on Label Format.

the long term. In this market, consumers must be able to exercise free choice of resources, including existing resources in order for demand to affect prices and thereby drive new supply. Customer research, including focus groups conducted by DOER, shows that customer choice is going to be affected, in part, by environmental information included in labeling, among other customer preferences. Consumer preference for certain types of resources or disdain for other resources, as influenced by label information, will most surely create price signals that in turn will drive resource dispatch and development decisions. The extent of such consumer demand is unknown at this point, and this should have no bearing on whether a product-based label is used. The market will decide this question, if allowed by regulators to differentiate products effectively. The proper role of a label is to ensure that accurate and meaningful information on specific products is available to customers so as to foster an efficient market outcome.

The Department may have concerns with product-based labeling because they see it as preventing customers from knowing the company's overall resource portfolio and associated emissions and labor practices. If a Supplier chooses to market its resource portfolio as different products, some customers may still want to know what resources the Supplier is using for all its products being sold in the market. For example, a customer who is opposed to nuclear energy may want to know if any of the products a Supplier sells contain nuclear energy.[3] DOER's recommended solution to this concern, as put forth in our proposed regulations to the Department, is to require that the Supplier disclose its resource portfolio and associated emissions and labor information in its annual report. In addition, the label could include a footnote that clearly states that the power source, emissions and labor data are associated with the specific product only, and not the Supplier's entire resource portfolio, and that the latter information could be obtained from the Supplier.

Another potential concern that may have led the Department to adopt company-based labeling is regional considerations, particularly during the transition period to choice in neighboring states.

[3] This should not, however, be equated with misleading customers about the products they are buying, as would be the case with company-based disclosure labels. Obliterating distinctions among products denies customers (and market forces) the chance to cure this problem through their choices.

Suppliers with green resources may find that states with disclosure labels are more attractive markets for their green resources than states without disclosure labels. Suppliers may decide to respond to these market conditions by marketing a disproportionate share of their green resources into choice/disclosure states. While this is not a desirable situation for states without label requirements, this is a market at work. The proper solution is not company-based labeling, which would homogenize the allocation of a multi-state company's green resources across the region and avoid product by product and state by state differentiation (as embodied in the Department's proposal). Rather, the solution is for other states to implement choice and labeling programs promptly to create similar market development opportunities for green energy Suppliers in those other states.[4]

Administrative concerns, such as those regarding data verification, may have also led the Department to propose company-based labeling. In D.P.U. 96-100, Model Rules and Legislative Proposal, pp. 128-129 (1996) the Department stated its concerns about the additional accounting procedures needed to verify product-based labeling. DOER believes that verification of retrospective, product-based labeling information will not impose significant additional burdens for the Department. Verification can rely primarily on authoritative settlement account data that will be produced routinely by ISO New England, supplemented with information provided by LSEs regarding the allocation of ISO settlement resources to all associated product(s) over quarterly allocation periods. There does not appear to be any reason that verification by the Department of product-based label information should impose burdensome or complex regulatory rules. DOER recommends that a straightforward, product-based verification process be included in the Department's labeling regulations, as set forth in Attachment 1.

It is not sufficient to suggest that differentiation can be accomplished when a Supplier establishes a separate ISO settlement account for each product, or creates separate companies to market

[4]For states that are slower to implement choice and labeling but plan on having Generation Portfolio Standards or Renewable Portfolio Standards, there may be some cost implications for being late to stimulate green market demand with choice and labeling. The resources needed to satisfy such standards may come later at a higher price than those purchased by consumers in states with early choice and labeling regimes. We find this to be one more compelling reason to place Massachusetts in the forefront of this trend, rather than to attempt to thwart it.

unique products. These are unworkable and would impose enormous and totally unnecessary transaction costs and other serious operational difficulties on Suppliers and increase costs to customers. A more straightforward and verifiable approach to product-based labeling is for the Department to allow Suppliers to obtain necessary information from their LSEs regarding the allocation of generation resources to all products associated with the individual LSE settlement account. If an LSE were unwilling to provide the necessary resource allocation data to the Supplier, then the LSE could not effectively sell electricity to a Supplier that wishes to sell in the retail market in Massachusetts. Note that in the case where a Supplier is not an LSE, and the Supplier does not choose to differentiate its product based on power sources, emissions or labor characteristics, then the disclosure for that Supplier would effectively be based on the LSE settlement account, and thus be company-based, and not product based.

We urge the Department to harness the power of accurate and meaningful labeling to enable product differentiation, a critical element in any successful competitive market. Both Suppliers and customers urgently require this information to operate efficiently. Labeling at a company specific level will be an obstacle to the fundamental public policy goal of customer choice of products in the electric industry.

(b) Prospective Disclosure Period: Section 11.06(2)(d)(1)(b)

When choice begins in Massachusetts, there is little if any doubt that many new Suppliers with a host of new products will seek to become participants in the retail market. The Department recognizes in section 11.06(2)(d)1(b)2 that if a new electric Supplier has operated for less than three months, a reasonable estimate of its resource portfolio (based on the Supplier's known generating unit ownership and contracts, and the average regional system mix) should be made. DOER concurs with the Department that it makes sense to require estimated labeling information when historical data are not available. If the Supplier is held accountable for representations made to customers during the prospective period, we see significant benefits to Suppliers and customers.

In our initial proposal submitted to the Department on January 9, 1998, DOER suggested that a

prospective label be used during the first 12 months after a new product's introduction to the market. Recognizing the Department's apparent concerns about a lengthy period of time for prospective disclosure, we revise our earlier recommendation and instead suggest that the Department use a six-month period for prospective, product-based disclosure. We think a six-month period will provide a more reliable load basis than a 3-month period because it will include a peak season (or near peak season) and an off-peak season.

To ensure the accuracy and honesty of prospective information on labels, we propose that the accuracy check for prospective labels should occur at the time when the product's label switches over to a retrospective basis (after six months).

(c) Computation of Average Generation Price: Section 11.06 (2)(b)(1)

Definition of Generation Price

DOER recommends that the recommendations as outlined above in Section IV (f) for changes to Competitive Billing be applied to labeling. For example, Section 11.06(2)(b) states that "this unit price shall be the price for generation services only...." This wording might be construed as not allowing a Supplier to recover basic transmission costs, such as the cost of connecting to the NEPOOL PTF system or the cost of transmitting from outside New England.

DOER suggests that the language be changed so that customers, in comparing Supplier costs, will "see" the full amount, in per-unit terms, of the "avoidable" charges under each option. A customer deciding between Standard Offer Generation Service and generation service from a Competitive Supplier should be able to compare the per-unit equivalent of all of Competitive Supplier charges (including those incurred by the Competitive Supplier for transmission service, etc.). Only when a consumer can make "apples-to-apples" cost comparisons can they make an informed choice.

Bundled vs. Unbundled Price

With regard to Section 11.06 (2)(d), Bundled Generation Service, DOER recommends that the

rules ultimately ordered by the Department regarding bundled prices should ensure that:

Market barriers against Suppliers' bundling services are not created;

1. Suppliers are not prohibited from using reasonable methods to impute values of generation service to some or all components of bundled service offerings; and
2. Suppliers are able to adjust the label unit price to reflect guaranteed energy efficiency savings.

Section (2)(b)(1)(d) of the Department's proposed regulations provide two options for price information on the label in the case of "Bundled Generation Service." While the second of these options provides a labeling method for Suppliers that intend to offer bundled packages, the result of this method could be to increase the price of generation, other things being equal. This option could thereby create a significant disincentive and market barrier to the bundling of generation with other products and services, including telecommunications as well as other forms of energy. This option could also make it difficult for customers to make meaningful comparisons, because it is not sufficiently uniform to enable customers "to readily evaluate power supply options available in the market," which was the objective behind the legislative mandate. (Act, Section 193(1F)(6))

DOER therefore suggests that, in order to allow the competitive market to work, additional flexibility should be allowed in cases where bundling is involved so that the generation price on the label can reflect real economies or efficiencies that result from the bundling by the Supplier. For example, one or more additional options could be added to Section (2)(b)(1)(d), which could include means to impute a value to one or more components of the bundle and/or means of connecting the computation of the average price on the label with the actual cost of generation to the customer as specified in the Terms of Service statement, contract, and invoices.

As a specific example, DOER recommends that the Department provide an option under which the generation price on the label can be computed to reflect savings from energy efficiency measures offered by Suppliers, as follows:

> "For any generation offering which includes energy efficiency or load management measures and which includes an explicit guarantee of annual bill savings to result from such measures, the calculation of the average unit prices of generation or energy shall reduce the unit price so as to reflect the guaranteed reduction of customer bills and shall increase the unit price so as to reflect all costs to be charged to customers for provision or installation of such measures over the contract term. The methodology for such unit price

calculations shall be described in detail in the annual report and shall be available to customers upon request."

DOER supports this provision on the basis that it will help to encourage the market to begin offering efficiency, rather than creating a new market barrier to such services. This is an example of a bundled service for which the Suppliers should be able to reflect on the label the real economies and synergies resulting from the bundle which actually reduce the unit price of generation.

In Section 11.06(2)(b)1(e), the term "inducements," is not clearly defined and may be interpreted too broadly. It could be appropriate for the "average price" to reflect cash inducements, if, for example, the "inducement" is a permanent "X percent" discount off of a specified rate. In addition, a phrase such as "except as provided elsewhere in these regulations" would further limit the scope of inducements that are not to be reflected in the price on the label.

Load Profiles and Cumulative Percent of Bills

In section 11.06(2)(b)1, the Department requires that the average price shown on the label for all time of use and seasonal prices be based on load profiles for each customer class for New England. DOER supports the use of load data to establish representative and accurate average price information on the label. To ensure that this occurs, we believe that load data must be used for any services that have fixed and variable charges, or declining or inclining variable prices structures. Even if a generation service is priced on a flat unit price that is not differentiated by time of use or amount of use, there is still logic in having a label show the average price at uniform usage levels to facilitate to other products in the market.

The Department proposal for use a load data does not address several important issues that were addressed in the DOER's proposed regulations of January 9. The DOER recognizes that the Department must play a central role in: (1) obtaining Massachusetts distribution company load data since Suppliers will not necessarily have access to this information, and will certainly not have out-of-state data, and (2) developing consistent statewide load data for defined customer classes in order to promote a uniform label format and comparability of the data. DOER suggests that the Department incorporate the details of the DOER proposed regulations (see XX.03(2)(d)

into its final regulations.

(d) Label Format: Section 11.06 (2)(d)(4)(e)

The Department's proposed regulations did not include specific language regarding the label format, however, it did include a sample label which was proposed by DOER, but was not endorsed by the Department. DOER has made several changes to this label format, and has attached a revised version, Attachment 2, to these comments. Note that the label attached to the Department's proposed regulations, and the label in Attachment 2, is illustrative of a retrospective label. Minor wording changes would be required for a prospective label, as discussed further below. We propose the following changes to the retrospective label format, and recommend that the Department adopt the format put forth in the attached label:

a) In the Power Sources section, the terms "Specified Sources" and "Unspecified Sources" should be changed to "Known Sources" and "System Power," respectively, consistent with the Department's proposed terms.

b) In the Power Sources section, the description under the Power Sources title has been changed from "Purchases of this electricity product in the period 3/1/98 - 2/28/99 resulted in the power generation by the following sources" to "*The following generation sources were used to provide this generation in the period 3/1/98-2/28/99."* The reason for this change is to avoid any implication that customer choice will necessarily affect dispatch or source development, as discussed earlier in Section A.

c) The label attached to the Department's proposed regulations includes footnote #1 which states that "*This electricity product is offered only in combination with other goods and services."* DOER proposes that this statement, if applicable, be moved to the Generation Price section, below the price information, where it can be clearly seen by customers. DOER also proposes a slight revision to the language as follows: "*This generation service is available only with the purchase of other goods and/or services. See back of label for further details."*

For prospective labels, the explanations under the section headings for Power Sources, Emissions and Labor Information should refer to "projected" information, rather than use references in the past tense, as in the case of the retrospective label. The Department may also wish to require that Suppliers indicate on the label whether the product is a new product, such as by indicating at the top of the label: "This is a New Product."

(e) Back of Label Information

DOER proposed in its regulations to the Department, and reiterates here, the need for there to be "Back of the Label" information. This information, as shown in Attachment 3, is an integral part of the label in that we believe customers need readily available information that describes the basic components of the label. Without such basic information readily available, we are wary that customers will be less incentivized to use the labels, since they would need to make additional efforts to understand the label information, either by calling the Supplier, DOER, AG's office or the Department.

(f) Clarification of Responsibilities Under the Department's Proposed Regulations

There are several areas in the Department's labeling proposal where DOER believes that the roles and responsibilities with regard to labeling are ambiguous or problematic. In section 11.06(2)(d)(1)(d), the Department states that the average characteristics of New England system power shall be determined by the Independent System Operator. While we fully support the ISO assuming this important role, we are concerned that the rules, as written, can not be legally enforced on the ISO, and that the ISO has no experience whatsoever collecting certain types of data (e.g. labor information) and no ability to require generation companies to furnish such data.

We believe that a more practical approach is for the Department to be the entity to take on the responsibility for developing this information. The Department can and should receive assistance of the ISO, DOER, DEP, U.S. EPA and other public and private entities in performing this function. This role is consistent with the one the Department has already established for itself in section 11.06(2)(d)(3)(d) in calculating the annual emission rates for each generating facility.

Another area where a clear responsibility must be delineated is in section 11.06(2)(d)(3)(e). While DOER supports the use of import system resource information on labels, it is not clear who is going to provide this information. Again, we recommend that the Department assume this responsibility, with the assistance of ISO, DOER, DEP, U.S. EPA and other public and private entities. If it proves impossible to account for imported system resource in a separate manner, we suggest that they be treated as New England System resources as a fallback position.

(g) Advertising Rules for Environmental and Labor Claims: Section 11.06 (6)(d)

Section 11.06 (6)(d) of 220 CMR allows a Supplier "to advertise the percentage of its resource portfolio that connotes or signifies to the [customer] the relative environmentally beneficial effects of the power or energy sold by said Supplier" under three circumstances. The second and third circumstances are based on whether the percentage exceeds levels mandated under DOER rules pertaining to a renewable portfolio standard ("RPS"), and whether the percentage exceeds levels required for compliance with any other regulatory requirements, such as a

generation performance standard ("GPS").

While DOER finds this approach intriguing, we believe it is premature to require such standards for two reasons. First, the RPS and GPS standards in Massachusetts do not take effect until December 31, 1999. As that date nears, the Department could have the opportunity to make changes to the regulations regarding advertising, assuming the Department adopts DOER's recommendation that the regulations be revisited in two years (see Section H below). A second reason to delay adopting any advertising regulations based on RPS and GPS standards is because of the need to coordinate regional advertising regulations. If Suppliers selling in Massachusetts were regulated by the Department's proposed advertising standards, and standards were different in other states, this could impose a substantial burden on Suppliers trying to sell the same products in other states, where they would have to adjust their marketing materials to be in compliance with the differing state advertising regulations. This is clearly not ideal.

We propose that until there is further development with other regional states regarding RPS and GPS standards, as well as more information becomes available regarding efforts underway to create voluntary "green" certification processes (e.g., Green-E), the Department should require that advertising claims be substantiated in accordance with standards defined in FTC and Massachusetts state law.

(h) Commitment by the Department to Review Label Issues in the Future

In DOER's proposed regulations to the Department, we proposed that the labeling and disclosure regulations expire on March 1, 2000, and that the Department open a rulemaking proceeding 120 days prior to the expiration date to update the labeling and disclosure requirements, as deemed necessary by the Department. We recommend that this type of provision be included in the regulations in order to provide the strongest incentives for all stakeholders to maintain an active commitment to the region-wide process of developing improvements to this interim approach, including appropriate enhancements to the ISO's information management systems. In our view, it is in the best interest of all stakeholders for the Department to have the flexibility to revisit the regulations and make necessary changes in order to ensure that labeling and disclosure requirements are improved and updated, if necessary.

Attachments:

Attachment 1	DOER's Proposed Methodology and Procedures for Verifying Product-based Disclosure of Fuel Mix, Air Emission and Labor Statistics
Attachment 2	DOER's Proposed Label Format (Prospective and Retrospective)
Attachment 3	DOER's Proposed Back of the Label

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